STATE OF MICHIGAN

COURT OF APPEALS

RAN ENTERPRISES, INC., d/b/a RAN TUBULAR AND METAL PRODUCTS, INC., Plaintiff-Appellant,	UNPUBLISHED May 22, 2007
v	No. 274082 Kent Circuit Court
PAULSTRA CRC CORPORATION, Defendant-Appellee.	LC No. 05-008588-CZ

Before: Hoekstra, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant in this action presenting claims of breach of contract and promissory estoppel. We affirm.

Defendant is a Tier One supplier to Ford Motor Company and supplies parts directly to Ford. Defendant supplied certain parts for Ford's D186 program relating to the Ford Taurus. The D186 program initially involved defendant supplying two primary load-carrying engine mounts and another engine mount that carried the transmission. In early 2002 Ford added another component to the D186 program, a cross car beam and a flange tube to attach to the ends of the cross car beam (the cross car beam project). Defendant sought a supplier to provide the cross car beam and flange tube. Defendant issued two requests for quotes (RFQ) to plaintiff, a Tier Two supplier, and other suppliers regarding the production of the cross car beam and flange tube. The RFQ form provided prospective suppliers with the necessary information, including the estimated production volume of **"**150,000 and 300,000."[1] The RFQ specifically stated that it "is not an order."

Plaintiff provided its response to the RFQs and provided plaintiff's pricing for the parts depending on the actual production volume. Defendant selected plaintiff as the supplier and, in the fall of 2002, the parties signed "Preaward Requirement Checklists" relating to the quoted

[1] The 150,000 quantity represents the cross beam, and the 300,000 quantity represents the flange tube.

parts. The checklists stated an "expected yearly volume" of 150,000 for the cross beam and 300,000 for the flange tube.

On September 4, 2002, Ford issued a purchase order for the tooling for the cross car beam project. According to defendant, the tooling order was Ford's authorization to defendant to proceed with buying the elements of tooling required to make the part. Defendant issued separate purchase orders to plaintiff for the tooling relating to the cross car beam project. There is no dispute that defendant paid the invoices relating to the initial tooling purchase orders as well as all parts ordered.

In September 2003, Ford cancelled the cross car beam project. Defendant thereafter notified plaintiff that the project was cancelled. In a letter in response to the notification, plaintiff demanded $751,781 in damages arising from the "cancellation of the project."[2] Defendant denied the claim, but paid plaintiff for outstanding costs that plaintiff was able to verify.[3]

Plaintiff filed the present action claiming breach of contract and promissory estoppel.[4] In its complaint, plaintiff alleged that "the parties agreed that the contract would require RAN to produce between 150,000 and 300,000 units." Plaintiff specifically identified the breach of contract as "terminat[ion] of the contract prior to the production of the 150,000 to 300,000 units." Defendant filed a motion for summary disposition, arguing that the RFQ and the preaward checklists did not guarantee a specific production volume, that plaintiff's president admitted that defendant did not guarantee production volume, and that defendant was obligated to purchase only the quantities set forth in written purchase orders.

Following a hearing on defendant's motion for summary disposition, the trial court granted defendant's motion, stating:

> The Court's of the opinion that there are no factual issues in dispute here. There were no guaranties here of quantity. There was no obligation created by this pre-award checklist. It was a proper cancellation by Paulstra.
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> This is something that was clearly not unusual in the auto supply industry, and it was clear from the deposition testimony of Mr. Alt, the president of plaintiff.

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[2] Plaintiff claimed damages for "unamortized direct costs of this program; reimbursement for losses sustained as a result of unutilized or underutilized capital equipment purchased and installed specifically for this program; lost profits; and miscellaneous expenses due to having to lay off employees hired specifically to service this program."

[3] Defendant paid plaintiff for raw material, work in progress, finished goods, and miscellaneous expenses.

[4] Plaintiff states in its brief on appeal that the promissory estoppel claim was included because defendant initially denied the existence of a contract. Plaintiff also states that defendant later acknowledged the existence of a contract.

Plaintiff argues that the trial court erred in dismissing its breach of contract claim. We review de novo the trial court's order granting summary disposition pursuant to MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

A contract for the sale of goods generally must be in writing to be enforceable if the goods cost $1,000 or more. MCL 440.2201(1). A quantity term must be in writing before a contract is enforceable. MCL 440.2201(1). Nothing in the RFQs or the checklists obligated defendant to purchase a specific quantity of parts from plaintiff. Indeed, plaintiff's president acknowledged that defendant never provided any guarantee as to the volume of parts to be produced and that he was exercising his business judgment in producing the parts. And, in its brief on appeal, plaintiff concedes that there were not "any 'guarantees' as to the number of parts that would ultimately be ordered by" defendant. At best, plaintiff has shown that defendant contracted with plaintiff to be the supplier of the parts for the cross car beam project. Plaintiff was to produce the parts after receiving a purchase order for a specific quantity from defendant. Although plaintiff may have hoped that defendant would order the quantities estimated in the RFQs and checklists, plaintiff was provided no guarantee that defendant would order a specific number of parts, or any parts. Therefore, the trial court properly granted summary disposition on plaintiff's breach of contract claim.

Plaintiff also argues the trial court erred by dismissing plaintiff's promissory estoppel claim. However, "[p]romissory estoppel is not a doctrine designed to give a party to a negotiated commercial bargain a second bite at the apple in the event it fails to prove breach of contract." *General Aviation, Inc v Cessna Aircraft Co*, 915 F2d 1038, 1042 (CA 6, 1990) (internal quotation marks and citation omitted). Because plaintiff concedes in its complaint that it entered into a contract with defendant, plaintiff's promissory estoppel theory is inapplicable.

Even if plaintiff's promissory estoppel theory is not precluded by the existence of a contract, promissory estoppel cannot provide plaintiff with a basis for recovery. In order to justify reliance and thus supply the predicate for an estoppel theory, a promise must be "actual, clear, and definite." *First Security Savings Bank v Aitken*, 226 Mich App 291, 312; 573 NW2d 307 (1997), overruled in part on other grounds *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999). As stated above, neither the RFQs nor the checklist made such a promise and plaintiff's president acknowledged that defendant made no production volume guarantee.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens